

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL NOS. 464, 465 & 467 OF 1990

First Appeal No. 464/1990

State of Maharashtra & two others. ... **APPELLANTS**

VERSUS

Vinayak Madhavrao Daoo. ... **RESPONDENT**

Mr. S.B. Ahirkar, A. G.P. , for the appellants.
Mr. S.N. Dhanagare, Advocate, for respondent.

First Appeal No. 465/1990

State of Maharashtra & another. ... **APPELLANTS**

VERSUS

Smt. Mangalbai w/o Shankarrao Daoo, Dead
through L.Rs., and others. ... **RESPONDENTS**

Mr. S.B. Ahirkar, A. G.P. , for the appellants.
Mr. S.N. Dhanagare, Advocate, for respondents.

First Appeal No. 467/1990

State of Maharashtra & two others. ... **APPELLANTS**

VERSUS

Vinayak Madhao Daoo and others. ... **RESPONDENTS**

Mr. S.B. Ahirkar, A. G.P. , for the appellants.
Mr. S.N. Dhanagare, Advocate, for respondent no.1.
Shri A.V. Bhide, Advocate, for respondent nos.2 (1) to 2(7).

CORAM : Smt. V.A. Naik, J.
DATED : JUNE 7, 2007

ORAL JUDGMENT

Since the facts involved in these three first appeals are almost common and judgment passed by the reference Court on 12th April, 1990 is common in two appeals and is almost identical in the third one though it is not common, these first appeals are being heard and decided by this common judgment.

2. The facts giving rise to these three appeals are as under:

The State of Maharashtra had acquired lands belonging to the respondents in these three appeals by issuing Section 4 Notification on 13/10/1983. It was the case of the respondents that their lands were surrounded by small plots in the residential localities of Jirapur Nagar, Mahavir Nagar, Ambika Nagar and Deogiri Nagar. According to the respondents their lands were in the vicinity of the Rest House, Bus Stand and Irrigation Colony. Admittedly, the lands were in the vicinity of Darwha town. Since the respondents were not satisfied with the compensation granted by the Land Acquisition Officer, they preferred an application under Section 18 of the Land

Acquisition Act before the Collector, Yavatamal, who in turn, referred the matter to the Civil Judge, Senior Division, Yavatmal. Common evidence was tendered in these land acquisition cases. Land Acquisition Case Nos. 55/1989 and 56/1989 were tried together and decided by common order passed by the reference Court. By a judgment and order of the even date, the Land Acquisition Case No. 57/1989 was also partly allowed by the reference Court. The reference Court awarded compensation to the claimants @ Rs. 5.50 paise per sq. ft. Being aggrieved by the judgments passed by the reference Court on 12th April, 1990, the appellant-State has preferred these three appeals.

3. Shri Ahirkar, the learned A.G.P. for the appellant-State submitted that the reference Court was not justified in granting compensation on the basis of the value of the land as if the land was divided into small plots. According to the learned A.G.P., the reference Court ought to have granted compensation for every hectare or acre of land and ought not have granted compensation for each square foot of land. According to the counsel for the appellants, every sale instance, which was considered by the reference Court relates to the sale of small plot and since the lands belonging to the

respondents were not converted into small plots, the reference Court could not have granted similar rate to the respondents while determining the compensation. According to the learned A.G.P., grant of compensation @ Rs. 5.50 per sq.ft. was on a much higher side and the judgments passed by the reference Court are, therefore liable to be set aside.

4. Shri Dhanagare and Shri Bhide, who appear on behalf of the respondents, submitted that the judgments passed by the reference Court are just and proper. According to the counsel for the respondents, in fact, the sale instance which was produced on record by the respondents clearly showed that the market value of the land in question was not less than Rs.10/- per sq. ft., but the reference Court granted only @ Rs.5.50 per sq.ft. as the respondents had prayed for compensation @ Rs. 6/- per sq. ft. According to the leaned counsel for the respondents, the copy of the Index Register clearly fortify the findings of the reference Court and since the lands involved in the transactions enumerated in the Index Register were of comparable land, the reference Court awarded compensation @ Rs.5.50 per sq.ft.

5. I have perused the record as also the judgments passed by the reference Court in these three appeals. It is not in dispute that the lands in question were situated adjoining to Darwah city on Darwah-Yavatmal Road. There were civil and criminal Courts, colleges, hospitals, banks, Post & Telegraph offices, Ginning and Pressing Factory, M.S.E.B. Office and big market place in the vicinity of the acquired land. The respondents had produced a copy of a city map to show that the lands were adjoining to Darwah city and were surrounded by the residential houses. Exhs. 21 to 27 were produced by the respondent-Vinayak to show that the land in the vicinity of the acquired land was sold @ Rs.10/- per sq.ft. Copies of the Index Register clearly showed that the market value of small plots in the vicinity of the acquired land was Rs. 10/- per sq.ft. Thus, there was ample evidence, of sale deeds of comparable lands, for determining the market value of the acquired land. The State of Maharashtra had not examined any witness and had not produced any material on record to show that market value of the land was less than Rs. 10/- per sq. ft. for a small plot. In view of the oral and documentary evidence tendered by the respondents before the reference Court, the reference Court came to a conclusion that small plots of land were sold @ Rs.

10/- to Rs. 20.50 per sq.ft. But since the lands of the respondents were not divided into small plots, the respondents were not entitled for grant of compensation at the aforesaid rate. The reference Court, therefore, deducted 25% area towards the development as per the Rules. Thus, after making a necessary deduction, the reference Court computed the market value of the land at Rs. 5.50 paise per sq. ft. The reference Court considered the principles laid down under Section 23 of the Land Acquisition Act as also evidence tendered by the parties, to arrive at a finding that the respondents were entitled to grant of compensation @ Rs. 5.50 paise per sq. ft. Since the grant of compensation at the aforesaid rate is not on the basis of one or two transactions, but is based on numerous sale instances, which were produced by the respondents on record, no fault can be found with the findings recorded by the reference Court to the aforesaid effect. It is conspicuous to note that most of the sale instances of comparable land were effected prior to the date of issuance of Section 4 notification in the instant case. They, therefore, rightly form the basis for determining the compensation in the instant case. The award of compensation @ Rs. 5.50 per sq.ft. is extremely just and reasonable and the finding recorded by the reference Court to the aforesaid effect

cannot be interfered with, in these first appeals.

6. For the reasons aforesaid, the first appeals are dismissed with no orders as to costs.

(Smt. V.A. Naik)
Judge

RMP